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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,770	10/14/2003	Thomas W. Kampf	02316.1220USD1	6337
23552	7590	08/17/2009		
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			EXAMINER OMGBA, ESSAMA	
			ART UNIT	PAPER NUMBER
			3726	
			MAIL DATE	DELIVERY MODE
			08/17/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/685,770	Applicant(s) KAMPF ET AL.	
	Examiner Essama Omgba	Art Unit 3726	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 5, 2009 has been entered.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernard (US Patent 6,450,458) in view Miranda (US Patent 6,107,575).

Bernard discloses a method of assembling a cable routing system 200 wherein a base element 220 is provided, the base element comprising a planar top surface having a linear mating edge on opposite sides of the planar top surface, a plurality of side elements 210 mounted to the base element by being integrally formed with the base element, a first plurality of the side elements 210 having an upstanding wall portion extending to a vertical height above the planar top surface of the base elements, a second plurality of the side elements defining side exits extending transversely to the edge of the base element (figs. 10 and 12) and down spout portions (fig. 13) to define a

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cable pathway extending from the planar top surface to a location below the planar top surface, see figures 1, 6, 10, 12 and 13. Although Bernard does not disclose the base element comprising a planar top surface having a linear mating edge on opposite sides of the planar top surface, each linear mating edge having a continuous cross-section along the length of each linear mating edge, and each linear mating edge defining a first mounting structure, a plurality of side elements mounted to the base element along the linear mating edges by attaching second mounting structures formed on the side elements with the first mounting structure of the respective linear mating edge, the first and second mounting structures being connected to couple the side elements to the base elements, however such construction of a cable routing system is known as attested by Miranda, see figures 1, 2, and 5-7. Therefore it would have been obvious to form the cable routing system of Bernard from separate elements as taught by Miranda, in order to be able to transport the cable routing system in a flat space-saving condition and to form it, at a site of use, into a U-Shape cable channel by appropriately connecting the base and side elements. The examiner notes that such modification of the method of Bernard would have been obvious to try since it would have amounted to choosing from a finite number of identified, predictable solutions (cable routing systems consisting of two side walls and a bottom wall that are integral or cable routing systems consisting of two side walls and a bottom wall that are separately formed and subsequently attached to each other to form the cable routing system, with a reasonable expectation of success. Regarding the recitation “the planar top surface being planar along an entirety of the base element extending between the first end and

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the second end, and between a first of the linear mating edge edges to a second of the linear mating edges, see figures 1 and 2 of Miranda for example where mounting raised structures are formed at each linear mating edge. Further, it would have been an obvious matter of design choice to make the different portions of the base element of whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. Applicant should note that the cable routing system of Bernard is formed of a plurality of base and side elements connected to each other. Also such cable routing systems are typically mounted so that the base elements are mounted at a vertical height above a telecommunications bay.

Response to Arguments

4. Applicant's arguments filed June 5, 2009 have been fully considered but they are not persuasive.

In response to Applicant's argument that Miranda and Bernard lack a planar top surface being planar along an entirety of the base element extending between the first end and second end, the examiner submits that, as outlined in the above rejections, Miranda teaches a planar top surface being planar along an entirety of the base element extending between the first end and the second end, and between a first of the linear mating edge edges to a second of the linear mating edges, where mounting raised structures are formed at each linear mating edge. Further, it would have been an

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obvious matter of design choice to make the different portions of the base element of whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results.

In response to Applicant's argument that the combination of Bernard and Miranda would not arrive at the claimed invention because the ends of the channels disclosed by Miranda do not have continuous cross-sections and if the side elements of Miranda could be coupled to the fittings shown in figures 10 and 12 of Bernard, the locking structure of the element 2 of Miranda would be required; the examiner submits that the proposed combination does not suggest coupling the fittings of Bernard to the side elements of Miranda but rather modifying the fittings of Bernard from integral fittings to ones constructed from separate elements in the same way the integral cable routing system of Bernard would be modified from an integral structure to one formed from separate elements. The fact that the locking structures taught by Miranda are elevated with respect to the top surface of element 2 is inconsequential since applicant has not claimed any particular structure for the locking structure.

In response to Applicant's argument that Bernard teaches away from the purported combination with Miranda because Bernard states that "the coupler 100 has an inner wall consisting of two side walls 110 and a bottom wall 120, which are preferably integral and continuous", the examiner respectfully disagrees. As previously stated by the examiner, the term 'preferably' suggests that preference is given to a particular embodiment in lieu of alternative ones. Therefore the only thing that can be

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inferred from the cited portion of the Bernard reference is that Bernard favors an integrally formed routing system over one that is formed from separate elements for instance.

In response to applicant's argument that there is no suggestion as to how one would take the fittings disclosed by Bernard and incorporate the linear sections disclosed by Miranda to arrive at the claimed invention, the examiner submits that, as outlined above, the proposed combination does not suggest coupling the fittings of Bernard to the side elements of Miranda but rather modifying the fittings of Bernard from integral fittings to ones constructed from separate elements in the same way the integral cable routing system of Bernard would be modified from an integral structure to one formed from separate elements.

In view of the above remarks, the examiner maintains that a *prima facie* case of obviousness has been established in the instant application.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Essama Omgba whose telephone number is (571) 272-4532. The examiner can normally be reached on M-F 9-6:30, 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bryant can be reached on (571) 272-4526. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Essama Omgba/
Primary Examiner, Art Unit 3726

eo
August 15, 2009